87-109

No. _____

Supreme Court, U.S.
FILED
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CLERK

In The
Supreme Court of the United States
October Term, 1986

BILL ROSS CREAMER,

Petitioner,

v.

MICHAEL S. RAFFETY, *et al.*,

Respondents.

Petition For Writ of Certiorari to the Court of Appeals of the State of Arizona

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Civil Rights Attorney's Fees Act, 42 U.S.C. § 1988 requires a trial court to state reasons for an award of fees that is substantially less than requested by a prevailing plaintiff in a civil rights action.

PARTIES TO THE PROCEEDINGS

Petitioner, who was plaintiff below, is Bill Ross Creamer.

Respondents, who were defendants below, are Michael S. Raffety, Jean Raffety, Huey Lee Morris, Ruth Ann Morris, and City of Willcox.

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No. _____

In The
Supreme Court of the United States
October Term, 1986

BILL ROSS CREAMER,

Petitioner,

v.

MICHAEL S. RAFFERTY, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF ARIZONA

PETITION FOR WRIT OF CERTIORARI FOR THE PETITIONER, BILL ROSS CREAMER

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petitioner, Bill Ross Creamer, plaintiff-appellant in the court below, respectfully prays that a writ of cer-

tiorari issue to review the judgment of the Court of Appeals of the State of Arizona entered in this case on December 26, 1986, affirming the trial court's decision on the issue presented. A Petition for Review was denied by the Arizona Supreme Court on March 24, 1987.

OPINION BELOW

The opinion of the Court of Appeals of Arizona is reproduced at page 2a in the Appendix. The opinion of the Superior Court of Arizona is reproduced at page 7a of the Appendix.

JURISDICTION

The Supreme Court of Arizona denied review of this case on March 24, 1987. On June 2, 1987 Chief Justice William H. Rehnquist granted a Motion For Extension of Time to file this petition to July 22, 1987.

The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1988:

Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

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STATEMENT OF THE CASE

Petitioner commenced this civil rights case in 1980 by filing an action for damages and equitable relief in the Arizona Superior Court. The action presented claims under 42 U.S.C. § 1983 and related state causes of action.

Petitioner claimed that he had been unlawfully arrested, maliciously prosecuted, denied timely bail, subjected to an improper strip search, and denied due process of law

with respect to an incident that occurred on January 28, 1980 in the City of Willcox, Arizona.

At about 1 a.m. on that date petitioner was a passenger in an automobile that was stopped by the police because they suspected the driver of driving while intoxicated. Petitioner was arrested when he questioned the officer's right to conduct a search of the automobile and for his refusal to stand at a distance from the car. He was charged with obstructing a police officer, a misdemeanor under a City ordinance.

Petitioner was not searched or frisked at the scene. He was handcuffed in such a manner as to cause severe marks and bruises. At the police station, petitioner was subjected to a strip search and visual body cavity inspection under a policy requiring such searches for *all* in-coming prisoners regardless of the charges or any other factors. The search was conducted on a cold cement floor and caused petitioner humiliation and mental anguish.

Because the City of Willcox had failed to establish a bail schedule for violations of City ordinances such as the charge against petitioner (a schedule existed for all other criminal charges) and because the police interfered with petitioner's attempt to contact his family, petitioner was forced to spend the night in custody. He was released the next morning.

On April 2, 1980 petitioner was convicted in magistrate's court, but on trial *de novo* in the Superior Court of Arizona he was acquitted of all charges.

In his civil rights action, petitioner challenged the arrest, strip search, denial of release on bail, and the prosecution. The trial court granted summary judgment to the

defendants on the malicious prosecution claim and at trial granted directed verdicts against petitioner on all other counts.

On appeal, the Court of Appeals reversed in part and remanded for a new trial. *Craemer v. Raffety,* 145 Ariz. 34, 699 P.2d 908 (1984). The court ruled that the strip search policy was unconstitutional and directed that the lower court issue an injunction requiring the City to limit the circumstances under which such searches could be conducted. The court also remanded for trial petitioner's claims based on the failure to have a bail schedule for this offense and for the defendants' arbitrary interference with petitioner's attempts to contact his family to secure release on bail. According to the Court of Appeals, this claim presented valid due process and equal protection issues. 699 P.2d, at 917.

On remand, the trial court granted declaratory and injunctive relief on the strip search claim. The damages claim was settled for an amount of $5,250.00

Petitioner thereupon filed a Motion for Attorney's Fees and Costs under 42 U.S.C. § 1988 that, as supplemented, requested the following:

1.	Attorney's fees 464.8 hours at $90 per hour, plus 50% contingency multiplier	$69,720.00
2.	Paralegal fees 89.5 hours at $30 per hour	$ 2,685.00
3.	Costs	$ 6,140,81
	TOTAL	$78,545.81

In support of this motion, petitioner submitted a detailed affidavit of counsel's time, records, and bills.

Defendants opposed the request arguing first, that no fee was appropriate, and second, that if a fee was to be awarded, it should be far less than claimed by petitioner. Litigation of the motion included the testimony of petitioner's counsel, Tony K. Behrens, and two attorneys who testified as experts for the defendants.

The trial court, after hearing, awarded counsel fees and costs in the amount of $15,000.00.[1] No reasons were provided for awarding less than one-fourth of the fee request. The court did not find that the hours expended or the hourly rate were excessive; rather, the trial court adopted a "Proposed Form of Judgment" submitted by the respondents, which in boilerplate fashion stated that the court had considered the legal factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and that it would award $15,000 in attorney's fee. A. 7a-8a.

On appeal, the Court of Appeals affirmed the award (as amended to include taxable costs and expenses) and rejected petitioner's claim that the trial court had erred in failing to state reasons for its ruling. The Court of Appeals ruled that where a fee was denied "altogether," reasons must be given, but where a fee is awarded, even if

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[1]Since no reasons were given for the fee award, it is impossible to determine whether the trial court rejected petitioner's requested enhancement on the contingency factor. This factor was cited by the court, A. 7a, and if this case is remanded the state courts would have to consider this issue in light of *Pennsylvania v. Delaware Valley Citizen's Council for Clean Air*, 55 LW 5113 (U.S., June 26, 1987)

far less than requested, "the trial court is not required to state reasons in support of the award." A. 4a-5a.

The Court of Appeals quite clearly ruled that *no* reasons had been provided by the trial court. A. 4a. Accordingly, the issue is properly before this Court on this very specific legal question. Respondents made an argument below that reasons in fact were provided. First, it was asserted that while the matter was pending, the Court of Appeals directed the trial court to clarify whether, "out-of-pocket expenses were allowed either as costs or otherwise." In response, the trial court purported to state reasons for its fee award. Procedurally, this addition to the record was not proper (since not requested by the Court of Appeals). More important, it was not given any mention or weight by that court. The Court of Appeals decision is based on the understanding that no reasons were provided. In addition, the reasons given are not, we submit, sufficient to meet the requirements under § 1988.

Second, respondents pointed to remarks made by the trial court at the close of the evidentiary hearing. At that point the trial judge merely stated that in light of the nature of the case he was troubled by the amount requested, but that he would probably grant some part of the request. Hearing, Dec. 24, 1985, pp. 87-88. Obviously, these comments during a hearing are not the kind of reasons required by § 1988.

The Supreme Court of Arizona denied review on March 24, 1987. On June 2, 1987, Chief Justice Rehnquist extended the date for filing the Petition for Certiorari to July 22, 1987.

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REASONS FOR GRANTING THE WRIT

The Decision Of The Court Of Appeals Of Arizona Is In Conflict With The Applicable Decisions Of This Court And Of The Federal Circuit Courts Of Appeals With Regard To The Proper Interpretation Of 42 U.S.C. § 1988.

One important issue is presented for this Court's consideration: whether the Civil Rights Attorney's Fees Award Act, 42 U.S.C. § 1988, requires a trial court to state reasons in support of a decision awarding or denying fees to a prevailing plaintiff.

In this case, petitioner was clearly the prevailing party. He succeeded in obtaining a leading appellate court decision requiring a fundamental Constitutional change in strip search and bodily cavity searches procedures in Arizona. In addition, he received compensation by way of a settlement for the damages occasioned by the strip search and by his post-arrest incarceration.

Petitioner's Motion for Attorney's Fees was seriously contested with regard to the hours expended, the appropriate hourly fee, and the applicability of a contingency enhancement. The trial court expressly found that petitioner was entitled to a fee award, noting that "they did prevail. They did change the status of the law in this State." Hearing, Dec. 24, 1985, p. 88. However, after hearing, the trial court made an award of less than one-fourth of that requested by petitioner, and the court failed to provide a single reason for its decision. This action was sustained on appeal; accordingly, unless reviewed by this Court, in civil rights actions in Arizona state courts, trial courts will be under no obligation to provide reasons in ad-

judicating fee requests under § 1988. This clearly erroneous ruling conflicts with the decisions of this Court and of the Federal Circuit Courts of Appeals.

This Court has made it clear that in exercising its discretion under § 1988, the trial court must provide reasons for its decision. In *Hensley v. Eckerhart,* 461 U.S. 424 (1983) the Court set forth the basic framework for awarding fees. First, the "party seeking an award of fees should submit evidence supporting the hours worked and rates claimed." *Id.* at 433. Based on this evidence, and any other records or evidence in the case, the court should determine the fee by multiplying the reasonable number of the hours expended by a reasonable hourly fee.

Second, this amount may be adjusted depending on the factor of "results obtained," *id.* at 434, which comes into play most often where a plaintiff has prevailed on less than all of the litigated claims. In making this determination the court may consider the twelve factors of *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (5th Cir. 1974), but no precise rule or formula is mandated for all cases.

Third, the trial court has discretion in determining the amount of a fee award, but in exercising this discretion the court must articulate its rationale:

> We reemphasize that the district court has discretion in determining the amount of a fee award. This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters. *It remains important, however, for the district court to provide a concise but clear explanation of its reasons for the fee award.* When an adjustment is requested on the basis of either the exceptional or limited nature of

> the relief obtained by the plaintiff, the district court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained. *Hensley, supra,* at 437 (Emphasis added).

In *Hensley,* the Court remanded for a further hearing on the fee award, in part because the district court despite having made a "commendable effort to explain the fee award", *id.* at 438, had not adequately explained the relationship between the award and the actual level of success. The Court ruled that the issue of which claims were actually successfully litigated requires a statement of reasons that is not satisfied "by a mere conclusionary statement that this fee was reasonable in light of the success obtained." *Id.* at 439, n.15.

While *Hensley* contains the most explicit statement on this issue, this Court's decisions in other § 1988 cases also stress the significance of stated reasons in ruling on a fee award. In *City of Riverside v. Rivera,* — U.S. —, 106 S.Ct. 2686 (1986), the Court sustained a fee award in part because of the district court's specific fact findings on the issues of whether (1) the time claimed was reasonably expended, (2) whether the attorneys' performance entitled them to be compensated at prevailing market rates, and (3) whether the award should be adjusted to account for the fact that not all claims were successfully litigated. 106 S.Ct. at 2692-93.[2] See also *Pennsyl-*

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[2]Justice Powell, concurring, stated that affirmance of the fee award was "required by the District Court's detailed findings of fact, which were approved by the Court of Appeals." 106 S.Ct. at 2698.

vania v. Delaware Valley Citizens' Council for Clean Air, 55 LW 5113 (June 26, 1987); *Blum v. Stenson*, 465 U.S. 886, 900 (1984) (any upward adjustment of fee based on claim that outcome was of great benefit to class must be based on specific finding of exceptional success).

The federal circuit courts of appeals are nearly unanimous in requiring district courts to state reasons in ruling on fee requests under § 1988 or analogous statutes. See, e.g., *Sargeant v. Sharp*, 579 F.2d 645 (1st Cir. 1978); *Lucero v. Trinidad*, 815 F.2d 1384 (10th Cir. 1987); *Ursic v. Bethlehem Mines*, 719 F.2d 670 (3rd Cir. 1983); *Mammamo v. Pittston Co.*, 792 F.2d 1242 (4th Cir. 1986); *Van Ooteghem v. Gray*, 628 F.2d 488 (5th Cir. 1980); *Walje v. City of Winchester*, 773 F.2d 729 (6th Cir. 1985); *Greer v. Holt*, 718 F.2d 206 (6th Cir. 1983); *Murphy v. Kolovitz*, 635 F.2d 662 (7th Cir. 1981); *Jordan v. Multnomah Cy.*, 799 F.2d 1262 (9th Cir. 1986); *Gaines v. Dougherty County Board of Education*, 775 F.2d 1565 (11th Cir. 1985); *Crumbaker v. Merit Systems Protection Board*, 781 F.2d 191 (Fed. Cir. 1986). But cf., *Davis v. City of Abbeville*, 633 F.2d 1161 (5th Cir. 1981).

The rationale of these cases is consistent with *Hensley*. Articulation of reasons is necessary to ensure that the standards mandated by this Court in determining fee awards are followed and that discretion is properly applied. Further, an order that does not provide for "a deliberate articulation of its rationale, including some appraisal of the factors underlying the court's decision [does not] allow for [an] informed review of the Court's discretion." *Sargeant v. Sharp, supra*, at 647. See also *Ursic v. Bethlehem Mines, supra*, at 675; *Van Ooteghem v. Gray*, 628 F.2d 488, 497 (5th Cir. 1980) ("absent spe-

cific findings by the district court . . . appellate review of the reasonableness of the fee award becomes a task of sheer speculation."); *Thorne v. City of El Segundo*, 802 F.2d 1131, 1141-42 (9th Cir. 1986). In *Northcross v. Board of Educ. of Memphis City Schools*, 611 F.2d 624, 632 (6th Cir. 1979), the court stated that:

> . . . both the court's findings and its mode of analysis must be clear to enable an appellate court to intelligently review the award. The plaintiffs are entitled to some explanation of the reasoning used to exclude those hours . . . and some description of the findings relied upon to find that expenses and billing rates were excessive. Any review of the court's awards in this case would require . . . sheer conjecture on our part as we speculate as to reasons why the court might have cut certain documented hours. In fact, it is impossible to tell whether the district judge might not have simply overlooked certain services provided by plaintiffs' attorneys. Certainly no more substantial reason appears in this record.

In this case, petitioner prevailed on appeal on a major issue under the Fourth Amendment, thus limiting the circumstances under which the Arizona police can strip search arrestees. This ruling resulted in an injunction and a new state wide rule of law. A. 9a. Further, petitioner received by way of a settlement $5,250 in damages for his constitutional claims. And while he did not prevail on all of his claims, the record on the attorney's fee motion, including counsel's affidavit and deposition, would surely justify the full fee requested. There is absolutely no way of determining whether the trial court applied the proper standards in reaching its decision. Further, it is not possible to determine which hours may have been discounted or whether the hourly fee was considered ex-

cessive. For all the record shows, this award may have been based solely on the theory of proportionality, an approach which was rejected in *City of Riverside v. Rivera, supra.*

This is not to say that based on other evidence before the Court, that the fee request could not be reduced in some respects under the *Hensley* standards. But the court does not meet its responsibilities under *Hensley* by merely holding a hearing and then stating that it has considered the *Johnson Express* factors. It must also provide some reasons for its action, particularly when it reduces a facially valid request by over 75%.

We do not suggest that unnecessarily detailed fact findings or reasons must be given; rather, the court should give reasons sufficient to demonstrate it has considered the evidence in light of the standards under § 1988, that it has in fact applied the proper standards, and that in making the award it has properly determined the appropriate hourly rate, reasonable time expended, and any other factors cognizable under the statute. The decision should state why the award is less than the fee requested.

A grant of certiorari and reversal is particularly important in this case, where a federal civil rights claim was litigated in state court.[3] To ensure that the state courts properly adjudicate fee requests under § 1988 it is

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[3]The Arizona Court of Appeals noted that it had previously required a trial court to give reasons when it denied a fee award altogether. A. 4a. But the difference between denying a fee and the kind of substantial reduction made in this case is wholly arbitrary.

important that the decision of the Arizona Court of Appeals be expressly repudiated. An increasing number of these cases are being heard by the state courts and it is critical that they adhere to the standards which govern attorney's fee litigation in such cases.

CONCLUSION

For all of the foreging reasons, it is respectfully requested that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Arizona.

Respectfully submitted,

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Attorney of Record
For Petitioner

APPENDIX

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BILL ROSS CREAMER,	)	2 CA-CV 5761
	)	Department B
Plaintiff/Appellant,	)	
	)	*MEMORANDUM*
v.	)	*DECISION*
	)	Not for
MICHAEL S. RAFFERTY,	)	Publication
JEAN RAFFERTY, HUEY	)	Rule 28(a)(2),
LEE MORRIS, RUTH ANN	)	Rules of Civil
MORRIS, and CITY OF	)	Appellate
WILLCOX,	)	Procedure
	)	
Defendants/Appellees.	)	(Filed December
	)	26, 1986)

APPEAL FROM THE SUPERIOR COURT
OF COCHISE COUNTY

Cause No. 39687

Honorable James L. Riley, Judge

AFFIRMED AS MODIFIED

BEHRENS & DESENS
by Tony K. Behrens — Bisbee

Attorneys for Plaintiff/Appellant

MESCH, CLARK & ROTHSCHILD, P. C.
by Tom R. Clark — Tucson

Attorneys for Defendants/Appellees
Rafferty and Morris

RIDENOUR, SWENSON, CLEERE & EVANS
by Michael J. Frazelle
and Thomas E. Weland — Phoenix

Attorneys for Defendant/Appellee
City of Willcox

LACAGNINA, Judge.

Bill Ross Creamer filed a civil rights action for damages arising out of a strip search conducted in connection with his arrest in Willcox, Arizona. The complaint, filed pursuant to 42 U.S.C. § 1983, also sought to enjoin the City of Willcox from enforcing its strip search policy and asserted various other claims. After this court rendered its decision in *Creamer v. Rafferty*, 145 Ariz. 34, 699 P.2d 908 (App. 1984), the parties settled the case except for Creamer's claim of $64,000 for attorneys' fees. Trial of that claim to the court resulted in an award of $15,000 for fees, expenses and costs.

Creamer asks in this appeal that we remand the case to the trial court for a statement of the reasons for the amount of the award. In the alternative he asks that we increase the trial court judgment by approximately $64,000, the amount requested in the trial court. Prior to our consideration of this appeal, we ordered the trial court to enter findings showing the specific amounts of costs and fees included in its $15,000 award. In its Minute Entry response, the trial court stated that the $15,000 was an award of attorneys' fees only and that although it had intended to award reasonable costs and expenses in addition to those attorneys' fees, it inadvertently failed to do so in the March 17, 1986 judgment. We affirm the findings of the trial court as amended to include taxable costs and expenses.

Creamer first argues that the trial court failed to state its reasons for the amount of attorneys' fees awarded as required by 42 U.S.C. § 1988. He relies on *Moran v. Pima County*, 145 Ariz. 183, 700 P.2d 881 (App. 1985), *cert. denied*, 106 S.Ct. 397; however, *Moran* is distinguishable

from the instant case. In *Moran* the trial court denied fees altogether, and this court held that the judge should have given the reasons for such denial. We reaffirm that ruling. However, where more than nominal fees are awarded, we hold that the trial court is not required to state reasons in support of the award.

In the case at issue, the trial court did award attorneys' fees to Creamer, the prevailing party. In its judgment, the trial court stated that it had considered:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

The judgment also stated that the court had presided over the initial trial of the matter; considered this court's decision on appeal; reviewed the file, motions, memoranda and certain depositions, and heard testimony in support of and in opposition to the motion for attorneys' fees. Although these statements do not constitute reasons for the amount of the award, they are matters the trial court should have considered in determining that amount. *See City of Riverside v. Rivera*, — U.S. —, — n.3, 106 S.Ct. 2686, 2691 n.3, 91 L.Ed.2d 466, 475 n.3 (1986), *citing Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th

Cir. 1974). This recitation is sufficient. The trial court is not required to quantify each factor in order to show how it arrived at the amount of the award. *See City of Riverside v. Rivera, id.* This would be a waste of judicial time and, in some cases, nearly impossible. The record need only reflect that there was sufficient evidence under the applicable law to support the court's determination.

We find that there was substantial evidence to support the trial court's award. There is contrary evidence, but the trial court's findings are binding unless clearly erroneous, and we will not substitute our opinion for that of the trial court. *Higdon v. Evergreen International Airlines, Inc.,* 149 Ariz. 452, 453, 719 P.2d 1068, 1069 (1986); *Fleming v. Pima County,* 141 Ariz. 167, 168, 685 P.2d 1319, 1320 (App. 1984), vacated in part, 141 Ariz. 149, 685 P.2d 1301 (1984). Two experienced attorneys testified that they had reviewed the file and familiarized themselves with the legal work required. One testified that a maximum reasonable fee for Creamer's counsel would be $15,000, including work on appeal, and the second that $7,500 to $10,000 would be full, complete, adequate, and just compensation for Creamer's counsel.

The evidence offered by Creamer showed that his counsel had the case from 1980 through 1985; worked 478.6 hours on it; had billable time of 89.5 hours for a paralegal; and had a total of $6,172.72 in costs and expenses. The necessity of the hours claimed by the attorneys and paralegals was hotly contested. Both attorney witnesses testified that the amount of time claimed by Creamer's attorneys was unnecessary and unreasonable.

The amount of attorneys' fees to be awarded in civil rights litigation is within the sound discretion of the trial

court, *Hensley v. Eckerhart,* 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), and will not be disturbed absent an abuse of that discretion. *Rutherford v. Pitchess,* 713 F.2d 1416 (9th Cir. 1983). We find no abuse of that discretion in this case.

Since the trial court intended to award costs in addition to the $15,000 attorneys' fees, but the judgment failed to include costs, we amend the judgment of the trial court to include $4,007.26 for the costs and expenses which we have determined are properly taxable.

/s/ Michael A. Lacagnina
MICHAEL A. LACAGNINA, Judge

CONCURRING:

/s/ Lloyd Fernandez
LLOYD FERNANDEZ, Judge

/s/ Joseph M. Livermore
JOSEPH M. LIVERMORE, Presiding Judge

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF COCHISE

BILL ROSS CREAMER, Plaintiff, vs. MICHAEL S. RAFFERTY, et al., Defendants.	NO. 39687 PROPOSED FORM OF JUDGMENT (Filed March 17, 1986)

The court having considered the Plaintiff's Motion For Award Of Attorneys Fees and Costs in the above-entitled matter and this court having presided over the initial trial of the matter; having considered the decision of the Court of Appeals; having reviewed the file, motions and memorandums in support of and in opposition to the motion for attorneys fees; having reviewed the depositions of Mr. Behrens and Mr. McDonald and heard testimony before the court in support of and in opposition of the motion for fees; having considered (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations

imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. IT IS THEREFORE

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendants and the court assess reasonable costs and attorneys fees in the amount of $15,000.00.

DONE IN OPEN COURT THIS 17th day of March, 1986.

/s/ James L. Riley
Honorable James L. Riley
Superior Court Judge
Cochise County-Division 3

SUPERIOR COURT OF ARIZONA
COUNTY OF COCHISE

BILL ROSS CREAMER,	)	
	)	No. 39687
Plaintiff,	)	
	)	FINAL
vs.	)	DECLARATORY
	)	JUDGMENT
MICHAEL S. RAFFERTY, et al.,	)	AND
	)	PERMANENT
Defendant.	)	INJUNCTION
	)	
	)	

This matter having come before the Court pursuant to Plaintiff's Motion for Entry of Final Declaratory Judgment and Permanent Injunction, and the Court having considered the respective positions of the parties and the decision of the Court of Appeals in Case No. 2 CA-CIV 4981, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the policy adopted by the City of Willcox and effective in 1980 regarding mandatory strip searches of all City Jail inmates is declared unconstitutional, as in violation of the Fourth Amendment to the Constitution of the United States.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the City of Willcox be, and is hereby, permanently enjoined from engaging in any policy requiring the strip searching of all City Jail inmates, and henceforth any strip searches of Willcox City Jail inmates shall be in accordance with the following conditions:

1. No strip search is permissable of prisoners arrested for traffic violations, petty offenses or minor offenses (misdemeanors), or first offenders, unless reasonable suspicion exists that the person to be incarcerated may be carrying or concealing contraband.

Report Required: A memo shall be prepared whenever a prisoner is strip searched based on suspicion. The memo shall contain all facts present which gave rise to the suspicion. A person arrested for possession of marijuana, drugs or weapons charges shall meet the minimum suspicion requirements for a strip search. The memo shall contain a brief statement articulating all available details which give rise to suspicion or probable cause. A copy of the memo shall be stapled to the booking sheet and the original forwarded to the Chief of Police.

2. *Cavity Searches:* are prohibited without probable cause, a warrant, and then are to be conducted only by a physician at a medical facility.

3. *Definition of Contraband. Weapons:* pointed or sharpened instruments, club, or objects capable of inflicting bodily injury upon another. *Flammables:* poisonous or explosive material or device, or any kind of ammunition. *Narcotics:* intoxicant, depressant or stimulant including alcohol or alcoholic beverage. Any device, paraphernalia, or item which can be used for the injection, inhalation or absorption of drugs or medicines not prescribed by a physician and administered by a jail staff member. Any mask or item designation to alter the individual's appearance which could be used for escape.

4. Prisoners shall be advised prior to being assigned to trustee duty that they will be subject to strip searches.

5. Whenever possible single bunking is preferred. For example, segregation of felony from misdemeanor, convicted from pending trial, female away from male, and adult from juvenile.

6. No one shall be strip searched if there is no intent to introduce the prisoner into the city jail.

7. When it is expected that the prisoner will be booked and no other prisoner is in the cell, and the person is not arrested for drugs or weapons charges the prisoner will not be strip searched.

8. A pat down frisk will suffice for a search prior to placing prisoners in their cells.

9. All items other than underwear, pants and shoes without laces will be removed from prisoners.

IT IS THE FURTHER FINDING of the Court that there is no just reason for delay in the entry of final judgment as to this Declaratory Judgment and Permanent Injunction and entry of final judgment is hereby expressly directed as to such matters, pursuant to Rule 54(b) of the Arizona Rules of Civil Procedure.

DATED this 1st day of July, 1985.

/s/ James L. Riley
Judge of the Superior Court